

STATE PUBLIC DEFENDER [493]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 7, "Definitions" Chapter 12, "Claims for Indigent Defense Services," and Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These proposed amendments reflect current practice, increase certain fee limitations regard certain classes of cases, necessitated by an attorney fee rate increase enacted as 2007 Iowa Acts, SF575, and impose limitations on the submission of claims for services from certified shorthand reporters.

Interested persons may make written comments or suggestions on the proposed amendments on or before March 24, 2008. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087; faxed to (515) 281-7289, or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on March 24, 2008, at 9:15 a.m. in Conference Room 424 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the State Public Defender and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 13B and 815.

Item 1. Amend rule 7.1 definition of “timely claim” as follows:

“Timely claim” means a claim submitted to the state public defender for payment within 45 days of the date of service in a case in which the attorney was appointed after June 30, 2004. A claim not submitted within 45 days of the date of service shall be deemed a timely claim if the delay in submitting the claim was due to the extended illness, hospitalization or death of the attorney. A timely claim returned to the claimant for additional information shall continue to be deemed timely only if resubmitted with the required information within ~~20~~ 45 days of being returned by the state public defender.

Item 2. Amend subrule 12.2(1), paragraph “b”, subparagraph “4” as follows:

12.2(1) Court-appointed attorneys shall submit written claims to the state public defender for review, approval and payment. These claims shall include the following:

b. A copy of all orders appointing the attorney to the case.

(4) An appointment order is not necessary for trial counsel to request or resist an interlocutory appeal or an application for discretionary review.

(5) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

Item 3. Amend subrule 12.2(10) as follows:

12.2(10) Time and expenses claimed by an attorney in withdrawing from, or related to withdrawing from a case in order to either retire from the practice of law or pursue another job will be denied.

Item 4. Amend rule 12.2 by adding the following new subrule:

12.2(13) Time and expenses claimed by an attorney for representing a parent in a child in need of assistance case or termination of parental rights case for work performed subsequent to the date on which the termination of that parent's parental rights becomes final, either on appeal or because no appeal was taken, will be denied.

Item 5. Amend rule 12.5 as follows:

493—12.5(13B,815) Appellate contracts. Subject to the provisions of this rule, an attorney who has entered into a contract with the state public defender shall be paid \$1,750 1,800 for each appellate case to which the attorney is appointed. Following submission of the attorney's proof brief, \$1,200 is payable; the remainder shall be paid after the final brief is filed.

Item 6. Amend subrule 12.5(3) as follows:

12.5(3) *Applications for further review.* In a case in which an application for further review is filed, the contract amount will be increased by the reasonable amount of time necessary for the further review, payable at \$55 60 per hour.

Item 7. Amend subrule 12.6(1) as follows:

12.6(1) *Adult cases.* The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	\$18,000
Class B felonies	\$3,600
Class C felonies	\$1,200 <u>1,800</u>
Class D felonies	\$1,200
Aggravated misdemeanors	\$1,200
Serious misdemeanors	\$600
Simple misdemeanors	\$300
Simple misdemeanor appeals to district court	\$250 <u>300</u>
Contempt/show cause proceedings	\$250 <u>300</u>
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation	\$250 <u>300</u>
Extradition	\$250 <u>300</u>
Postconviction relief—the greater of \$1,000 or one-half of the fee limitation for the conviction from which relief is sought.	

Item 8. Amend subrule 12.6(2) as follows:

12.6(2) *Juvenile cases.* The state public defender establishes fee limitations for combined attorney time and paralegal time for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,100 <u>1,200</u>
Child in need of assistance (CINA) (through disposition)	\$1,100 <u>1,200</u>
Termination of parental rights (TPR) (through disposition)	\$1,650 <u>1,800</u>
Juvenile court review and other postdispositional court hearings	\$300
Judicial bypass hearings	\$150 <u>180</u>

Juvenile commitment hearings	\$150 <u>180</u>
Juvenile petition on appeal	\$550 <u>600</u>
Motion for further review after petition on appeal	\$275 <u>300</u>

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is ~~\$1,100~~ 1,200 for all four proceedings, not ~~\$1,100~~ 1,200 for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to ~~\$1,100~~ 1,200 for the child in need of assistance case and up to ~~\$1,650~~ 1,800 for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on

appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

Item 9. Amend subrule 12.9(2) as follows:

12.9(2) Hearings. The following shall apply to hearings on motions for court review:

f. If a ruling is entered ~~allowing additional fees~~ modifying the state public defender's action on the claim, the attorney must file a new claim with the state public defender within 45 days of the date of the court's order modifying the state public defender's action on the claim. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

Item 10. Amend subrule 13.2(4), paragraph "a", subparagraph "8" as follows:

a. The certified shorthand reporter submits a signed original and one copy of a claim containing the following information:

(8) The claimant's name, address, social security number or federal tax identification number, e-mail address, if any, and telephone number.

Item 11. Amend subrule 13.2(4) by adding the following new paragraphs:

d. Claims for services completed before July 1, 2008, are timely if submitted to the state public defender for payment before August 15, 2008. Claims for services completed after June 30, 2008 are timely if submitted to the state public

defender for payment within 45 days of the date on which services are completed.

e. For depositions, services are completed on the date the deposition transcript is delivered or disposition of the case if no transcript is ordered, which ever date is earlier. For trial transcripts, services are completed on the date the trial transcript is delivered.

f. Claims which are not timely will be denied.

January 30, 2008

Thomas G. Becker
State Public Defender